

1 we really strongly believe that the settlement
2 agreement is in the public interest or we
3 would not have advanced it, meaning the Bureau
4 and the licensees that have signed onto it.
5 And so speaking collectively on behalf of
6 those that signed the settlement agreement, we
7 wouldn't frivolously put something before you
8 to consider, but we are only willing to
9 overlook the allegations insofar as
10 commitments advanced in that settlement
11 agreement.

12 We are not, by entering that
13 settlement agreement, commenting on the
14 legitimacy of our case would to advance it to
15 hearing. And that's something I'm clarifying
16 more for Mr. Waugh than for your Honor, and
17 I'm also clarifying it for the record.

18 But the third and final point that
19 I'd like to make is that, you know, I know
20 that your Honor made the suggestion off the
21 top of his head, but the one about, you know,
22 there being some sort of remaining in place of

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1 the restriction that's currently in the
2 settlement and just adding a caveat to that
3 restriction that unless the competent court
4 orders otherwise, you know, the Bureau thinks
5 offhand that that is a great idea.

6 Of course, the Bureau would have
7 to check. We'd have to check with our client
8 in order to confirm whether that would be
9 possible. And it's not the preferred route
10 that we would take given the time and efforts
11 that everyone has expended into a negotiated
12 agreement that is currently signed and has
13 already been submitted for your Honor's
14 approval, but just to, to float the idea and
15 to go along with what you said, to explore
16 options as to whether this case can be
17 terminated without the need for a hearing.

18 I would ask that you please pose
19 the question to Mr. Waugh through his counsel.
20 Would they be amenable to a settlement
21 agreement were it revised in that fashion?

22 JUDGE SIPPEL: Okay. Want to

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1 consider that one, Mr. Silva?

2 MR. SILVA: Absolutely. I mean,
3 subject to checking with my --

- 4 JUDGE SIPPEL: I understand.

5 MR. SILVA: -- client, but --

6 JUDGE SIPPEL: But all that stuff
7 about rebanding and everything and the general
8 counsel and all that, that's has to go. That
9 would have to go.

10 MR. SILVA: All right.

11 MS. SINGH: So just to be clear,
12 and for the Bureau to fully understand the
13 proposal that Mr. Waugh is willing to
14 entertain through his attorney, it is our
15 understanding that the settlement agreement
16 would remain exactly as is except that
17 provisions that deal with transfer of stock to
18 Mr. Waugh through a voting trust held for his
19 benefit would contain a few words of caveat
20 that state that it would remain that way until
21 or unless a court of competent jurisdiction
22 orders otherwise.

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1 JUDGE SIPPEL: But that includes
2 appeals and everything.

3 MS. SINGH: That includes appeals,
4 finality, and everything else that could
5 happen as a result of that action. That is
6 the Bureau's understanding of the presiding
7 judge's ideas. Is that correct?

8 JUDGE SIPPEL: That's it.

9 MS. SINGH: Okay. And, Mr. -- I
10 would ask that Mr. Waugh confirm if he's on
11 the same page through his counsel.

12 JUDGE SIPPEL: Well, I'll give you
13 ten days to figure it out.

14 MS. SINGH: Ten days.

15 JUDGE SIPPEL: I don't have a
16 calendar with me right now. What is -- can
17 someone count ten days?

18 MS. SINGH: That would be September
19 19 if it's calendar days.

20 JUDGE SIPPEL: Yes. What day --
21 what day of the week -- oh, here, I got one
22 right here. September 19 is a Saturday, can't

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1 do it.

2 MS. SINGH: So September 21 would
3 be the next business day that follows.

4 JUDGE SIPPEL: Okay. That's not
5 some kind of a holiday or something, is it?

6 MS. SINGH: September 21 is not.

7 JUDGE SIPPEL: September is loaded
8 with holidays.

9 MS. SINGH: Yes, your Honor. As
10 far as the Bureau understands, it's not a
11 holiday of the type that --

12 JUDGE SIPPEL: It's not an
13 observance or something like that?

14 MR. SILVA: No.

15 MS. SINGH: No, it's not.

16 JUDGE SIPPEL: Okay. Okay. Let's
17 do it on the 21st then, by the 21st.

18 MR. SILVA: But, your Honor, I
19 wonder if we should ask Mr. Austin what his
20 position is.

21 JUDGE SIPPEL: No. Well, yes, of
22 course, but I don't think that this is an

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1 appropriate form to do it with. I've the
2 Bureau onboard, you got to check on your
3 client, and I think that the, the interests of
4 the company are going to have to be sifted
5 through by Mr. Austin and Mr. Guskey and
6 whoever of these other -- apparently there's
7 a good group of dissident shareholders and a
8 bad group of dissident shareholders, my
9 characteristics.

10 As long as the good guys go along
11 with it I guess that would be no problem. But
12 I can't speak for you. I can't speak for the
13 company. But you got ten days to figure it
14 out, so -- and talk to the Bureau counsel very
15 carefully before you make a final decision
16 that's all.

17 MR. GUSKEY: Yes, your Honor, I
18 appreciate that. This is Mr. Guskey. As far
19 as your suggestion and the language change,
20 that is completely in line with the pleading
21 that Preferred had filed.

22 In a settlement fact statement, it

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1 specifically in arguing that Mr. Waugh has not
2 been punished, and he's not legally right,
3 pointed out that he remains that he has a
4 claim and he can take that claim to court in
5 which case if he gets specific performance
6 ordered by that court that that is something
7 that Preferred would be to abide by.

8 So since the topic is on the table
9 being discussed and the points of view and the
10 positive force that I'm hearing from the EB
11 and Mr. Silva, what you described, Preferred
12 has already acknowledged exists, and again,
13 that emphasizes that the, the denial of Mr.
14 Waugh's claim was not imposed by the
15 Enforcement Bureau.

16 It was a Preferred corporate
17 decision and in line with that perspective and
18 stance, he likewise acknowledged that should
19 a court of competent jurisdiction order those
20 shares issued that the Preferred subject to
21 its appeal or challenge to that would abide by
22 that court as having proper jurisdiction over

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1 the matter as opposed to this court for
2 instance.

3 JUDGE SIPPEL: Okay. Well, I like
4 what I'm hearing. Okay, that's set. We don't
5 need to discuss it today any further then.

6 MS. SINGH: Your Honor, if I may.
7 The reason that the Bureau requested a
8 conference today was to iron out any pleading
9 cycles that may be necessary for pending
10 pleadings before your Honor.

11 If we were to entertain the idea
12 of discussing by September 21 what the
13 proposal vetted here might be for the parties
14 and whether they'd be an agreement for it,
15 assuming that they would be, could you please
16 let us know what the pleading cycle for any
17 pleadings due as a result of that discussion
18 might be?

19 JUDGE SIPPEL: You talking about,
20 you mean, like a full, a full opposition to
21 the -- you had several things I think going
22 on. The big one to me was the opposition to

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1 the partial summary.

2 MS. SINGH: Well, your Honor,
3 actually, first I was only getting to the
4 matter --

5 JUDGE SIPPEL: Do you have a list?

6 MS. SINGH: First, I was just
7 getting to the matter that we immediately
8 discussed, meaning if the parties vet with
9 their individual clients and investors and
10 shareholders and everybody else, that such a
11 provision, meaning the provision about a
12 caveat being added to the voting trust
13 restriction in the settlement agreement, if
14 everybody vets it and it's okay by September
15 21, by when would we need to file the
16 pleadings before your Honor effectuating that?

17 JUDGE SIPPEL: Well, I'm saying by
18 the 21st there would be something filed on the
19 record that would say, or a status statement,
20 --

21 MS. SINGH: Okay.

22 JUDGE SIPPEL: -- saying, agreed,

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1 and, you know, then you can tell me, give us
2 five or ten days. I mean you can do it in any
3 number of ways. You can just add it in
4 pencil, pen rather, you can write it right
5 into that agreement rather than having to
6 recast the agreement and everything. It would
7 just be a question of dating it and initialing
8 the change. It's not really a change either.
9 It's just an add-on.

10 MS. SINGH: All right.

11 JUDGE SIPPEL: But I don't want to
12 tell you how to do it, I mean, but look at it
13 and see -- look, if you agree in principle to
14 this by the 21st of September and you let me
15 know that way either by a status report, you
16 started off with an email, but at some point
17 you're going to have to get it on the record
18 by the 21st.

19 MS. SINGH: So your --

20 JUDGE SIPPEL: You can have, you
21 know, another ten days to get the paperwork
22 done. I don't care. I mean, I want to know

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1 that the case is under control. Right not,
2 it's not. If you do this, it will be.

3 MS. SINGH: All right. So just
4 make sure that the Bureau understands, your
5 Honor.

6 JUDGE SIPPEL: Sure. I'll issue an
7 order on this too, but go ahead. You go
8 ahead. You ask me what you want to ask me.

9 MS. SINGH: Thank you, your Honor.
10 Would the parties' documents, due to this
11 effect, then be due on October 1, which is ten
12 calendar days after September 21, the deadline
13 to conclude such additional negotiations?

14 JUDGE SIPPEL: Well, I can put that
15 in if that's what -- is that okay?

16 MR. SILVA: Yes.

17 JUDGE SIPPEL: What is October 1st?
18 Again, that's not a holiday.

19 MS. SINGH: That's a Friday, your
20 Honor.

21 JUDGE SIPPEL: It looks to me a
22 Thursday, okay.

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1 MR. SILVA: It is a Thursday.

2 MS. SINGH: I'm sorry, it is a
3 Thursday.

4 JUDGE SIPPEL: That's fine. That's
5 fine. So give me the days again, 21 September
6 and 1 October.

7 MS. SINGH: Yes, so the Bureau's
8 understanding is that by 21 September, the
9 parties must conclude this extra round of
10 negotiations if it undertakes them and --

11 JUDGE SIPPEL: Correct.

12 MS. SINGH: -- present a status
13 report to your Honor, and by October 1, the
14 parties and the Bureau must file any documents
15 effectuating those negotiations if they
16 successfully conclude in an amendment to the
17 settlement agreement.

18 JUDGE SIPPEL: That's fine.

19 MS. SINGH: And would the -- would
20 your Honor be amenable to continuing the
21 freeze on additional pleadings --

22 JUDGE SIPPEL: Exactly. Everything

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1 is frozen, except this.

2 MS. SINGH: Okay.

3 JUDGE SIPPEL: Everything is
4 frozen, but I will, I mean, that freeze order
5 was by email. I will reduce that to formal
6 order also.

7 MR. SILVA: Your Honor, in
8 connection with the freeze, I had a deadline
9 yesterday to file my appeal under 1.302 --

10 JUDGE SIPPEL: You got it. You
11 made it.

12 MR. SILVA: -- which I filed it,
13 you know, --

14 JUDGE SIPPEL: I can't freeze --

15 MR. SILVA: Okay. Well, I just
16 wanted to explain that I wasn't in --

17 JUDGE SIPPEL: No, no.

18 MR. SILVA: -- derogation of the
19 freeze. It was just something that we felt
20 that we had to do.

21 JUDGE SIPPEL: For my purposes, Mr.
22 Silva, I looked upon it as a status report.

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1 The Commission will see it differently
2 perhaps, but I don't think there's going to be
3 any problem. If we tell the Commission by the
4 21st or around the 21st of September that this
5 thing is all put to bed then I'm thinking
6 everybody is going to be very happy.

7 MR. OSHINSKY: Your Honor, so then
8 just to be clear, --

9 JUDGE SIPPEL: Yes, sir.

10 MR. OSHINSKY: -- if we file the
11 status report presumably, and it's --

12 JUDGE SIPPEL: You can do it before
13 the 21st if you want.

14 MR. OSHINSKY: But do we still
15 return to, to see your Honor on the 21st or
16 not?

17 JUDGE SIPPEL: No, you're not going
18 to come back and see me.

19 MR. OSHINSKY: Okay.

20 JUDGE SIPPEL: You just tell me
21 that in the principle, here is what has been
22 agreed to, that we will add this provision or

1 something of that nature and that everybody is
2 onboard with it. And then, I mean, I'm
3 assuming you're going to have that pinned down
4 by exchange of letters or somehow or other
5 between the parties.

6 You're letting me know that it's
7 solved, the problem is solved. And then you
8 got until October 1 to get the formal
9 paperwork together, which I would think would
10 be very simple. So that, so like you're
11 filing on the record on other words.

12 The public record is going to say,
13 this is an amended settlement agreement, or
14 whatever it is, you know, however you want to
15 call it. Or you can even have a rider on it.
16 I mean, any way -- whatever is the most
17 convenient way to do it that does the job.

18 MS. SINGH: Thank you, your Honor.
19 And just to, just to entertain the possibility
20 if it exists that the parties cannot
21 successfully conclude their negotiations and
22 if your Honor were to lift any freeze on the

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1 pleadings to be filed, could the Bureau
2 request a conference at that time to revisit
3 the pleading schedule that we could have
4 otherwise talked about today?

5 JUDGE SIPPEL: There may the
6 necessary, necessary to have, could very well
7 be necessary to have another conference, but
8 remember that there is still pending. I have
9 not revoked my order. My order is dismissing
10 the case to suspended pending all of this. Am
11 I correct? I mean, I'll go back and look at
12 the terminology I used, but I did not revoke
13 it.

14 MS. SINGH: That's correct
15 according to our understanding, your Honor.

16 MR. OSHINSKY: No, you stated it.

17 JUDGE SIPPEL: So I don't -- I see
18 no harm done, but somebody is going to have,
19 or myself, is going to have somehow refer to
20 the Commission on the issue of the
21 jurisdiction. In other words, if I can't, we
22 can't make this happen by the 21st, on October

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1 1st, do I still have jurisdiction over this
2 case since there's an appeal up there now.

3 And, you know, my order, unless I
4 revoke my-order, and I still -- I don't know,
5 you know, -- do you understand what I'm
6 saying? I mean, I'm not all together clear at
7 what point does my -- does my clock run out?

8 MS. SINGH: We're aware of that --

9 JUDGE SIPPEL: Unless somebody has
10 a -- I don't think, if anybody hasn't raised
11 an objection, I don't think it's going to be
12 a problem, so I think as a practical matter it
13 won't.

14 MS. SINGH: Your Honor, with
15 respect to the appeal that was currently filed
16 and pending by Michael Judy, we understand
17 that he's --

18 JUDGE SIPPEL: He pulled that back.

19 MS. SINGH: And with respect to the
20 appeal filed by Mr. Waugh, the Enforcement
21 Bureau could potentially file a similar
22 pleading to what it filed in response to the

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1 Michael Judy appeal notifying the Commission
2 that the matter remains pending before your
3 Honor.

-4 JUDGE SIPPEL: I think you can
5 wait. Wait until after -- my suggestion would
6 be to wait. You can do what you want with the
7 Commission. I can't tell you what to do
8 there, but wait until after the 21st. You
9 know, if you have this thing then you might
10 want to just send a document up there saying
11 that it's moved.

12 MR. SILVA: Well, I could withdraw
13 it.

14 JUDGE SIPPEL: He withdraw it, yes.
15 I mean, mechanically, I'm not worried about
16 that. You're being, you're being very
17 careful. It's good lawyering.

18 MS. SINGH: Thank you, your Honor.

19 JUDGE SIPPEL: Okay. You've
20 exhausted me.

21 MS. SINGH: And ourselves.

22 JUDGE SIPPEL: And it's -- what

1 time is it there on the clock?

2 MS. SINGH: 11:52, your Honor.

3 JUDGE SIPPEL: Okay. If this
4 works, time well spent. Thank you very much.
5 We're at recess until the next call. Thank
6 you.

7 (Whereupon, proceedings in the
8 above-entitled matter went off the record at
9 11:52 a.m.)

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Pendleton C. Waugh, et al

Name of Hearing

EB DOCKET NO. 07-147

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

September 9, 2009

Date of Hearing

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September 9, 2009

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